borne, formerly Sir Roundell Palmer, who was one of the counsel in the Geneva Arbitration in 1871, and author of the Judicature Act of 1873, and Sir William Grove.

Of the Court of Appeal the head, *ex officio*, is Lord Chief Justice Coleridge, with a salary of £8,000. He very seldom sits in this court, but generally in his own court at jury trial, or as senior of a divisional court of the Queen's Bench Division. He was Solicitor General under Gladstone in 1868, and later Attorney General. In 1873 he was offered the position of Master of the Rolls, but refused it, Sir George Jessel obtaining it. He then became Chief Justice of Common Pleas, and in 1880 Lord Chief Justice. He administers the law with great boldness and freedom, and between him and Lord Esher there is great rivalry. In the absence of Coleridge, Lord Esher presides over the Court of Appeals, with a salary of £6,000. He was formerly Mr. Justice Brett, and is a conservative in politics; he has little patience for theory and innovation, but is opposed to fine distinctions, basing his decisions on common sense; he was a great oarsman in college, and has a large knowledge of nautical and mercantile affairs. He was made Lord Esher in 1880, and Master of the Rolls in 1883.

Of the judges of Court of Appeal, with a salary of £5,000, Lindley, L.J., is author of Lindley on Partnership. Bowen, L.J., is a typical scholar, well known as a translator of Virgil. Lopes, L.J., who was a member of Parliament until 1876, is a solid judge without a brilliant reputation, and has served his fifteen years, after which time a judge becomes entitled to a pension. Kay, L.J., is the latest judge appointed, having had a great reputation as a puisne Chancery Justice.

Of the fourteen judges of the Queen's Bench Division of the High Court of Justice, with a salary of £5,000, Mr. Justice Hawkins is of most varied talents, with a shining reputation for political oratory, a lover of sport, and with a keen sense of humor. He is always expected to act with some disregard of ordinary rules. He was formerly counsel in the famous Tichborne case. Mr. Justice Denman, who succeeded Mr. Justice Willes, was member of Parliament from 1859 to 1872. Baron Pollock, who is a son of the Lord Chief Baron of the Exchequer, succeeded Baron Channell in 1873. He, Lord Esher, and Lord Coleridge are the only ones of the present judges who sat in the old courts of Westminster.

Of the five Chancery judges, Mr. Justice Romer and Mr. Justice Stirling were distinguished scholars and senior wranglers. Mr. Justice Chitty, is well known as an athlete, and has for some years been judge of the university boat-races.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They present, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

PROOF IN BANKRUPTCY ON JOINT OBLIGATIONS (*From Professor Ames' Lectures*). — Suppose that A and B are jointly liable to C on a bond for $10,000.

1. Where both A and B are insolvent, what are the rights of C as to proof in bankruptcy?

It is settled law that if C has received no dividends from either estate, he may prove for the full amount against each, receiving in dividends

only enough to give him full payment. After proof is made, a dividend from one estate will not reduce the proof against the other. If, however, a dividend is received from A's estate before proof is filed against B's, the latter proof must be diminished by the amount of the dividend already received. Thus, if A's estate has paid fifty per cent. the subsequent proof against B's estate must be for $5,000 only; and if B's estate pays fifty per cent. C will receive only seventy-five per cent. in all.

The results reached by the established rule are certainly unsatisfactory. Obviously each estate ought in justice to bear an equal burden. But as the law stands, if A becomes bankrupt first, proof for the full amount can be made against his estate; while subsequent proof against B's estate must be diminished by the amount received from A's. If each estate pays fifty per cent., A will be obliged to pay $5,000, and B only $2,500. The same result will be reached if the creditor inadvertently or through ignorance delays his second proof until after a dividend has been declared upon the first. A rule which thus distributes the burden unequally and hap-hazard according to mere chance has little to commend it as a practical working-rule. Nor is it necessary upon sound principles. To an action at common law on an obligation under seal, payment was no defence. If the obligor upon payment was not diligent enough to take a discharge under seal, or to have the instrument delivered up to be destroyed, he was liable to another action at law on the obligation. His only remedy was a bill in equity. The foundation of this bill was the injustice of allowing the creditor to receive payment twice. Now, upon a joint bond each obligor is liable, and a judgment at law may be recovered against each for the full amount. If one of the co-obligors, for example A in the case stated, had paid half the debt, he would still be liable at law for the whole amount, and B would also be liable for the whole amount. And, as the creditor has received but half the amount due him, neither A nor B would have any equitable defence except as to half the debt. And if B is insolvent and only able to pay fifty per cent., there can be no equitable bar whatever to the creditor's legal claim against him for the full amount; because, upon the hypothesis, the creditor will not receive more than the amount actually due. It would seem to follow that if both the obligors are insolvent, being both liable at law for the full amount, full proof should be allowed against each estate, the fact of a dividend received from one declared before proof against the other being no answer to the second proof in full, unless it can be shown that the dividend from the second estate will give the creditor more then he is equitably entitled to receive. If the first estate pays more than its proper share, that is, more than half the debt, anything received from the second estate in excess of full payment should be allowed to be received in trust to be paid over to the first estate. Thus if A's estate pays seventy-five per cent., $7,500, and B's estate subsequently yields fifty per cent., $5,000, the surplus, $2,500 must be handed over by the creditor to A's estate. Perfect equality is thus secured. This rule is based upon the theory that a creditor can prove for what is legally due him. The only other sound view is that the creditor can prove only for what he is equitably entitled to receive. Neither of these views is entirely consistent with the authorities. Upon the latter theory dividends from one estate, although not declared until after proof against the other, should diminish that proof. And upon this view the legal rights of a creditor

who holds as security for his debt an obligation of a third person for a sum exceeding the amount of the debt are greatly curtailed. It is held, and it certainly seems just, that in the bankruptcy of such third person, proof may be made against his estate for the full amount of his obligation, though the dividends will be limited to the amount of the primary debt. This decision must go upon the theory that a creditor may prove for his full legal debt. And the rule based upon this theory, and recognizing the true nature of the defence of payment, is not only consistent and sound upon legal principles, but will also be found in application to produce the most satisfactory results.

2. Where A is solvent and B insolvent, and A pays the whole debt, what are the rights of A as to proof in bankruptcy against B's estate?

The settled rule is that A can only prove for half the debt. This may rest either on the ground that B really owes A only half of the amount paid, or on the theory suggested above that a creditor can only prove for what he is equitably entitled to receive. It is open to the same criticism as the rule in the case where A and B are both insolvent. If B, for example, can pay fifty per cent., the creditor by going first upon B's estate for the full amount will receive half the amount due, and can recover the other half from A. If he goes first upon A he will recover the whole from him, and B's estate will only be compelled to pay A one-quarter of the amount of the debt. If the view be adopted that the creditor can prove for the whole legal debt, a more satisfactory result will be reached. After A has paid, B is still liable at law to C for the full amount. As we have seen, on principle C should be allowed to prove for the full amount against B's estate, and receive dividends up to half the amount of the debt for the benefit of A. His legal right against B he really holds solely for A's benefit. And it would seem that A should be subrogated to this right, and allowed to prove directly against B's estate. There is a line of cases which seem to support this theory. Where it is the law that in bankruptcy specialty debts shall be paid first, if A and B are jointly liable on a bond to C, and A pays the whole, his claim in bankruptcy against B is treated as a specialty claim. This can only rest on the theory that A proves on the legal right against B vested in C, but held by C for A's benefit. It would seem that consistency would require that in such a case A's proof should be for full amount. But the cases hold otherwise.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — MASTER AND SERVANT — CONCEALED RISKS OF EMPLOYMENT — VOLENTI NON FIT INJURIA. — Plaintiff, employed in defendant's factory, was injured by falling upon steps which, as plaintiff was aware, had been rendered icy by the freezing of spray from steam-pipes. *Held*, that it was error to withdraw the case from the jury upon the ground that the risk was one which, by entering the employment, she had assumed. *Fitzgerald* v. *Connecticut River Paper Co.*, 29 N. E. Rep. 464 (Mass.).

The court reasoned that an employee did not, by entering the service, take the risk of non-apparent dangers; that it was not established in this case that when plaintiff entered the employ of defendant, she had reason to foresee that the steps